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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,480	11/19/2003	Geoffrey M. Glass JR.	163-49	8446

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EXAMINER

BRADEN, SHAWN M

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/718,480	Applicant(s) GLASS, GEOFFREY M.	
	Examiner Shawn M. Braden	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/10/2004</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7, is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the language "molded together" means. The longitudinal members made in the same mold or are the longitudinal members made separately then molded together. Clarification is required.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 7, is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. How the invention is made or assembled is critical or essential to the practice of the invention, but is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Claim 7 says longitudinal members are injection molded together, however the specification does not disclose how this is done.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(f) he did not himself invent the subject matter sought to be patented.

6. Claims 1-16 are rejected under 35 U.S.C. 102(a/e) as being clearly anticipated by Wilson (USPN 6,945,423).

7. Claims 1-16 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Wilson application has the exact same drawings. There are too many similarities to be two independent inventors working alone. For example the drawing figures are exactly the same and the elements are the same.

8. Claims 1-5, 11-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Spickelmire (US Pub. 2002/0063133).

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With respect to claim 1, Spickelmire show a plurality of longitudinal members, first and second strips (12)(paragraph 31 ln. 2), each having at least one mounting orifice (18) located at the end of the longitudinal member(12). A medial stabilizer (40) adapted to receive said plurality of longitudinal members. At least one fastener (22) configured to form a junction with said at least one mounting orifice (18) of said longitudinal members (12). At least one locking clip connectable with said at least one fastener (22), Spickelmire shows a screw for a fastener, although he discloses "other forms of fasteners such as nut and bolt combination, rivets, cotter pins, nails, screws, and the like may be used". Examiner considers applicants fastener of a modified shaft and a e-clip encompassed by Spickelmire's disclosure.

With respect to claims 2,16, Spickelmire shows a plurality of longitudinal members(12), each having a first mounting orifice (either element 18 on top) and a second mounting orifice(either element 18 on bottom), wherein said first and second mounting orifices are located at opposing ends of said longitudinal member(12). A medial stabilizer (40) adapted to receive said plurality of longitudinal members (12) at an intermediate location between said opposing first and second mounting orifices of said longitudinal members (12). A first fastener (22 on top) configured to form a first junction with said first mounting orifices (fig. 1). A second fastener (22 on bottom) configured to form a second junction with said second mounting orifices(fig.1). As for the locking clips as discussed above fasteners with locking clips would be an embodiment disclosed but not shown in Spickelmire.

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With respect to claim 3, Spickelmire discloses longitudinal members (12) are flexible (paragraph 27 ln 2). Therefore the junction would be just as flexible as applicant's junction.

With respect to claim 4,5,11-15 As discussed before Spickelmire shows a screw for a fastener, although he discloses "other forms of fasteners such as nut and bolt combination, rivets, cotter pins, nails, screws, and the like may be used". Examiner considers applicants fastener embodiments of a deformable locking clips are encompassed by Spickelmire's said disclosure.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spickelmire in view of Kobayashi (USPN 4,657,519).

With respect to claim 6-10, Spickelmire discloses the invention substantially as claimed. He discloses polyethylene is a desirable material for the longitudinal members. However Spickelmire does not disclose how he manufactures the plastic parts.

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Kobayashi teaches injection molding different parts in the same mold connected by breakable connectors (fig. 2c) in the analogous art of injection molding for the purpose of saving time and money.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to injection mold multiple parts of Spickelmire in the same mold having breakable connections in order to save time and money.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JES F. PASCUA
PRIMARY EXAMINER

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